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SOME STATISTICS RELEVANT TO THE TWO-THIRDS PAROLE LAW

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This report is designed to pull together statistical information on the two-thirds law and proposed changes thereof. The first four sections present some general background figures, while the last three address several issues that have arisen in past debate about the law. The choice of topics was governed largely by information requests received in previous years at the time of the debate on the two-thirds law.

1. How Many Offenders Are Affected by the Two-Thirds Law?

More specifically, this question is "what number of offenders are affected by the provision of the two-thirds law (Chapt. 127, Sect. 133, G.L.) whereby those convicted of any of 23 crimes of violence or sex, or attempts, or sentenced for crimes committed while on parole, must serve two-thirds of the minimum sentence (but in any event at least two years) before reaching their parole eligibility date?" This question can be taken as really two questions. First, how many of those committed each year are affected by the two-thirds parole eligibility provision? Second, how many of those currently incarcerated are affected by the two-thirds parole eligibility provision?

a. Commitments Each Year. The numbers of men committed to Walpole for "violent offenses" during 1967, 1968 and 1969 were, respectively, 255, 279 and 311. Since this constitutes virtually everyone committed each year whose parole eligibility date under this law is two-thirds of their minimum sentence, we are then talking about approximately 300 such offenders committed each year.

b. Current Population. The two tables below present the numbers of offenders currently incarcerated whose parole eligibility date is two-thirds of their minimum sentence. These figures are based on a count during the first week of February, 1972, of the current number of inmates sentenced for violent offenses (on definite sentences, for crimes committed after 2-15-66), and on an estimate from past research of the proportion of men sentenced for crimes committed while on parole. The first table presents the number of "two-thirds offenders" currently at each institution.

<u>Institution</u>	<u>Number of 2/3 Offenders</u>	<u>Total Institutional Population</u>
Walpole	341	608
Norfolk	425	727
Forestry	93	124
Concord	116	647
Framingham	7	128
TOTAL	982	2234

Data was also collected for this study by Paul Bourgeois, Edward Callahan, David Graves, Marion Hyler, and Daniel LeClair.

982 of the 2234 (or 44%) of the offenders currently incarcerated in these five institutions are affected by the 2/3 parole eligibility provision of the law. 859 of the 1459 (or 60%) of the men currently incarcerated at Walpole, Norfolk and the Forestry Camps are affected by the 2/3 parole eligibility provision. The next table presents, by offense, the total number of inmates currently incarcerated who fall under the two-thirds parole eligibility provision.

<u>Offense</u>	<u>2/3 Offender Population</u>
	N
Armed Robbery	373
Unarmed Robbery	64
Manslaughter	141
Assault	23
Assault with Dangerous Weapon	69
Assault to Murder	31
Assault to Rob	23
Kidnapping	21
Mayhem	5
Extortion	3
Rape	71
Assault to Rape	19
Carnal Abuse	31
Indecent Assault and Battery	6
Incest	7
Statutory Rape	6
Additional Number Sentenced for "Non-Violent" Crimes Committed While on Parole (estimated)	89
TOTAL	982

We can see then that, among current inmates affected by the 2/3 parole eligibility provision, 45% were committed for armed or unarmed robbery, 14% for manslaughter, 18% for other person offenses, 14% for various sex offenses, and 9% for non violent crimes committed while on parole.

2. How Many Additional Men Would Become Eligible for Parole If the Parole Eligibility Provision Were Changed From Two-Thirds to One-Third of the Minimum Sentence? It is estimated that an additional 350 to 400 inmates would become eligible for parole if the parole eligibility date for these men were changed from 2/3 to 1/3 of the minimum sentence. This number of 350 to 400 is then the number of inmates now short of their parole eligibility date (2/3 of the minimum) who are beyond the proposed parole eligibility date (1/3 of the minimum). It is of course impossible to tell how many of these inmates who would become eligible for parole, would in fact be released on parole by the Board's decisions.

In this connection it should be added that it is over twenty times as costly to maintain a man in prison as on parole (Fiscal year 1971 unofficial per capita costs = \$7300 per MCI inmate, \$309 per parolee).

3. What Are the Results of the One-Third Early Consideration Process?

This provision in the law (Chapt. 261, Acts of 1966) -- whereby men whose parole eligibility date is 2/3 of their minimum sentence may be released before their 2/3 date by applying for early consideration, being recommended at the institutional level, receiving approval by the Parole Board for an early interview, and being released on parole early by the Board -- may be described in two ways. First, how many men have been released via this route? Second, how do the stages of the process function?

a. From the date this law became effective (August, 1966) until the present, 126 men committed as "2/3 offenders" have been released under this provision before their 2/3 date. This number of 126 early releasees can be compared with an estimated 1050 men who have become eligible for release at some point between August, 1966 and the present. It should be explained that the estimated 1050 eligibles constitutes all men who have been sentenced under the 2/3 law for crimes of violence or crimes committed on parole (after February 15, 1966) who sometime from August, 1966 to the present reached a point of having served at least 1/3 of their minimum sentence. (This 1050 men are not the same as 2/3 offenders currently incarcerated)

b. The following information describes the numbers of applications for early 1/3 consideration that have been approved or not approved at each of the stages of the early consideration process. (The figures below refer to numbers of applications, not numbers of men; approximately 100 of the applications are reapplications)

Number of Applications at Institutional Level. (N=810)

Referred to Parole	589 (73%)
Not referred to Parole	221*(27%)

Number of Applications Referred to Parole Board. (N=589)

Given a hearing date	168 (29%)
Not given a hearing date	421 (71%)
(or action still pending)	

Number Given A Parole Hearing (N=168)

Paroled Before 2/3	126 (75%)
Not paroled before 2/3	42 (25%)
(or action still pending)	

The crucial step highlighted by this table is whether the Parole Board will give the man a hearing. The greatest number of men (421) were turned down at this stage (or, in a few cases, have action still pending on their applications).

One final description of the 1/3 early consideration process should be added. This is that most men released early were released relatively close to their 2/3 parole eligibility date. Of the 126 men released before their 2/3 date, 81 (or 64%) were released within twelve months before their 2/3 date.

* This figure of 221 applications not referred to parole does not include any ^{rejections} applications from the Forestry Camps. The process there is informal and correspondingly no records are kept of applications rejected at the institutional level. However, this deficiency in the data does not ^{significantly} alter the picture of the overall process.

4. What Has Been the Effect of the Recent Statutory Change Whereby To Give A Man An Early Hearing Date or to Release Him Before His Two-Thirds Date Requires Not A Unanimous But A Majority Vote of the Full Parole Board? From August, 1966 until September 28, 1971 the Parole Board gave early hearing dates to 149 of the 556 men (or 27%) recommended at the institutional level for early consideration. From September 29, 1971 to date (actually, during 1972 in all but one case), the Board has given early hearing dates to 19 of 33 men (or 58%) recommended at the institutional level for early consideration. In other words, the percentage of men recommended by the institution who were given early hearing dates has doubled from 27% to 58%. It is difficult to say from these 33 cases whether this doubling in the percentage of recommended men given early hearings is entirely the result of the statutory change, or whether other factors such as overcrowding in the institutions also played a role.

It is too early to gather figures on the number of men given parole hearings who will be paroled before their 2/3 date.

5. Existing Differentials in Sentences of Violent and Non-Violent Offenders. For those favoring the two-thirds law so that violent offenders will serve longer incarcerations, it is relevant that (even without this law) offenders committing violent crimes receive longer sentences. Judges, and the sentencing statutes, give longer sentences to violent offenders. For Walpole commitments during the period 1967-1969, the average minimum sentence received by violent offenders was 6.2 years, while the average minimum sentence received by non-violent offenders was 3.6 years. The average minimum sentence of the violent offender then is almost twice as long as that of the non-violent offender.

6. Problem of Discharge Date Coming Before Parole Eligibility Date. One problem in the application of the 2/3 law is that good conduct days are credited to the maximum but not the minimum of the sentence. This results in many situations where the discharge date is very close to (or even prior to) the parole eligibility date. This in turn means some men discharged to the community unsupervised rather than released on parole--as well as some additional men choosing discharge over a slightly earlier parole. How great is this problem? The table below is derived from a February, 1969 study of 199 Walpole men sentenced as violent offenders under the 2/3 law. It summarizes for these 2/3 violent offenders the typical length of time between the parole eligibility date and the discharge date:

	%
Discharge Date Prior to Parole Eligibility (P.E.) Date	2.0%
Discharge Date Coincides with P.E. Date	5.5%
Discharge Date Within 6 Months After P.E. Date	7.0%
Discharge Date Within 7-12 Months After P.E. Date	30.2%
Discharge Date 13 Months or More After P.E. Date	55.3%

7. Does the Distinction in the Two-Thirds Law Between "Violent" and "Non-Violent" Offenders (on the Basis of the Present Offense) Make Sense? One common argument against the 2/3 law is that the present offense does not adequately distinguish "violent offenders" from "non-violent offenders." Many men with violent present offenses have had no prior arrests for violent offenses, and many men with non-violent present offenses have extensive records of prior violent crimes. Further, many men with non-violent present offenses are much more prone to commit new violent crimes after release than others with violent present offenses. This argument concludes that consideration of the degree of violence of the offender is best left to the individual judgment of Parole Board members who can take many factors into account, rather than to a semi-automatic statutory provision.

To address this argument, information will be presented below around two questions: First, do men with violent present offenses have more extensive prior records of violent crimes? Second, are men with violent present offenses more likely to return for new violent crimes? The figures below are derived from data collected for a study of all men released from M.C.I.'s in 1966. We will be looking only at 1966 M.C.I. releasees with definite sentences, and dividing them into those with violent (N=336) and non-violent (N=250) present offenses. A "violent present offense" refers to the 23 crimes of sex or violence listed in the 2/3 law.

a. Do Offenders with Violent Present Offenses Have More Prior Arrests for Person and Sex Offenses? The table below presents -- for 1966 releasees with definite sentences having violent present offenses and for such men having non-violent present offenses-- the percentages with no prior arrests for person or sex offenses, as well as the percentages with one such prior arrest and with two or more such prior arrests.

<u>Number of Prior Arrests for Person or Sex Offenses</u>	<u>Percentage with Each Number of Prior Arrests for Person or Sex Offenses-- Violent Present Offense</u>	<u>Percentage with Each Number of Prior Arrests for Person or Sex Offenses-- Non-Violent Present Offense</u>
None	36%	49%
One	25%	28%
Two or More	39% } 64%	23% } 51%

These figures contain several important points. First, a third (36%) of the men committed for crimes of violence or sex had no prior arrests for such offenses. Second, half (51%) of the men whose present offenses were not crimes of violence or sex, had prior arrests for such offenses. Third, the percentage of men with some prior arrests for person or sex offenses is similar for those with violent present offenses (64%) and with non-violent present offenses (51%).

b. Are Offenders with Violent Present Offenses More Likely to Be Reincarcerated for New Violent Crimes? The table below presents-- again for 1966 M.C.I. releasees with definite sentences-- information on the post-release behavior of men with violent and non-violent present offenses. The table is to be read as follows: The top line presents the total recidivism rate of those with violent and non-violent present offenses, the recidivism rate being defined as the percentage of a set of men reincarcerated within 2 years for 30 days or more in a state, federal or county correctional institution. This total recidivism on the first line is then divided on the second and third lines into those reincarcerated as parole violators and on new court commitments. The fourth and fifth lines again subdivide the percentage reincarcerated on new court commitments into those recommitted for violent and non-violent crimes.

<u>Reason for Reincarceration</u>	<u>Percentage Reincarcerated for Each Reason-- Violent Present Offense</u>	<u>Percentage Reincarcerated for Each Reason-- Non-Violent Present Offense</u>
Total Reincarcerated Within 2 Years	34.9%	47.5%
As Parole Violators	23.3%	29.7%
On New Court Commitments	11.6%	17.8%
For Non-Violent Crimes	6.2%	14.3%
For Violent Crimes	5.4%	3.5%

The key point in this table is contained on the bottom line; the percentage of men reincarcerated for new violent crimes was only somewhat larger for those with violent present offenses (5.4%) than for those with non-violent present offenses (3.5%). Further, men with violent present offenses are less likely to be recommitted for new non-violent crimes, to be returned as parole violators, and overall to be reincarcerated within two. In summary, these figures seem to indicate that men with present offenses of violence or sex are not more of a danger to society after release than men with non-violent present offenses.

In conclusion, the figures presented in sections 7a and 7b together indicate that the violence of the present offense does not adequately or clearly distinguish "violent offenders" from "non-violent offenders"-- whether in terms of prior offense history, or of likelihood of subsequent violent crimes and danger to society. Thus the argument presented above, concluding in the point that consideration of the degree of violence of the offender is best left to the individual judgment of Parole Board members, seems to be strongly supported.